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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 DANNY H. BRANDT,
12 Plaintiff,
13 v.
14 JOSEPH LEHMAN AND ALICE PAYNE,
15 Defendants.

16 Case No. C07-5308FDB

17 ORDER DIRECTING PLAINTIFF
18 TO SUBMIT AN AMENDED
19 COMPLAINT OR SHOW CAUSE
20 WHY MATTER SHOULD NOT
21 BE SUMMARILY DISMISSED

22 The Court, having reviewed plaintiff's complaint and the balance of the record contained herein, does
23 hereby find and ORDER.

24 (I) A complaint is frivolous when it has no arguable basis in law or factFranklin v. Murphy, 745 F.2d
25 1221, 1228 (9th Cir. 1984). When a complaint is frivolous, fails to state a claim, or contains a complete
26 defense to the action on its face, the court may dismiss an *in forma pauperis* complaint before service of
27 process under 28 U.S.C. § 1915(d). Noll v. Carlson, 809 F.2d 1446, 575 (9th Cir. 1987) (*citing Franklin v.*
28 Murphy, 745 F.2d 1221, 1228 (9th Cir. 1984)).

29 (2) Plaintiff's complaint appears to call into question the validity of his conviction and/or sentence.
30 More specifically, Plaintiff is seeking damages from the defendants for not releasing him on a certain date.

31 In June 1994, the United States Supreme Court held that "[e]ven a prisoner who has fully
32 exhausted available state remedies has no cause of action under § 1983 unless and until the conviction or
33 sentence is reversed, expunged, invalidated, or impugned by the grant of a writ of habeas corpus." Heck
34 v. Humphrey, 114 S.Ct. 2364, 2373 (1994). The court added:

1 Under our analysis the statute of limitations poses no difficulty while the state challenges are
2 being pursued, since the § 1983 claim has not yet arisen. . . . [A] §1983 cause of action for
damages attributable to an unconstitutional conviction or sentence does not accrue until the
conviction or sentence has been invalidated.

3 Id. at 2374.

4 Plaintiff claims call into question the correct date of his release. Significantly, Plaintiff has not
5 shown that he has previously successfully challenged the release date way of petition for writ of habeas
6 corpus or similar challenges. Thus, it appears a claim for monetary damages is premature.

7 (3) Due to the deficiencies described above, the court will not serve the complaint. Plaintiff shall
8 file an amended complaint, curing, if possible, the above noted deficiencies, or show cause why this matter
9 should not be dismissed **by no later than July 27, 2007**. If an amended complaint is not timely filed or if
10 plaintiff fails to adequately address these issues, the Court will recommend dismissal of this action as frivo-
11 lous pursuant to 28 U.S.C. § 1915, and such dismissal will count as a “strike” under 28 U.S.C. § 1915(g).

12 (4) The Clerk is directed to send plaintiff a copy of this Order and the General Order.

14 DATED this 2 day of July, 2007.
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16 */S/ J. Kelley Arnold*
17 J. Kelley Arnold
United States Magistrate Judge
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